

Paul W. Shakespear (14113)
Cameron Cutler (15116)
Natalie Beal (18311)
SNELL & WILMER L.L.P.
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101
Telephone: 801.257.1900
Facsimile: 801.257.1800
Email: pshakespear@swlaw.com
ccutler@swlaw.com
nbeal@swlaw.com

Abram I. Moore (admitted *pro hac vice*)
Christian A. Zazzali (admitted *pro hac vice*)
K&L GATES LLP
70 West Madison St., Suite 3100
Chicago, IL 60602
Telephone: 312.781.6010
Facsimile: 312.827.8000
Email: abe.moore@klgates.com
christian.Zazzali@klgates.com

Attorneys for Plaintiff Eric Schiermeyer

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

ERIC SCHIERMEYER, Derivatively on
Behalf of Nominal Defendant, BLOCKCHAIN
GAME PARTNERS, INC. D/B/A GALA
GAMES,
Plaintiff,

vs.
WRIGHT THURSTON and TRUE NORTH
UNITED INVESTMENTS, LLC,
Defendants,

and
BLOCKCHAIN GAME PARTNERS, INC.
D/B/A GALA GAMES,
Nominal Defendant.

TRUE NORTH UNITED INVESTMENTS,
LLC, Derivatively on Behalf of Nominal
Defendant, BLOCKCHAIN GAME
PARTNERS, INC. D/B/A GALA GAMES,
Counterclaimant,

vs.
ERIC SCHIERMEYER,
Counterdefendant,

**ERIC SCHIERMEYER'S MOTION FOR
LEAVE TO FILE SURREPLY BRIEF**

Case No. 2:23-cv-00589-HCN-DAO
Judge Howard C. Nielson

Magistrate Judge Daphne A. Oberg

and
BLOCKCHAIN GAME PARTNERS, INC.
D/B/A BGP GAMES,
Nominal Counterdefendant.

TRUE NORTH UNITED INVESTMENTS,
LLC,
Crossclaim Plaintiff
vs.
BLOCKCHAIN GAME PARTNERS, INC.
D/B/A BGP GAMES,
Crossclaim Defendant.

Plaintiff Eric Schiermeyer, derivatively and on behalf of Nominal Defendant Blockchain Game Partners, Inc. (“BGP” or the “Company”), respectfully files this Motion for Leave to File a Surreply (the “Motion”), and requests that the Court grant leave to file a surreply to Defendants’ Consolidated Reply in Support of Motion for Restraining Order to Maintain Status Quo and Request for Immediate Hearing (“Defendants’ Reply”) (Dkt. No. 76), filed by Counterclaimants/Defendants Wright Thurston, True North United Investments, LLC (collectively “Defendants”).

1. Plaintiff Schiermeyer submitted his Opposition Brief (Dkt. No. 68) on November 14, 2023, setting forth the manifold deficiencies in the counterclaims upon which True North based its Motion for a Mandatory Restraining Order (Dkt. No. 63). True North, recognizing that its initial counterclaims were indeed deficient, filed an Amended Answer and Amended Counterclaims on November 16, 2023 (Dkt. No. 75). The Amended Counterclaims significantly revised the counterclaims upon which True North’s motion was initially founded and added three new counterclaims. In short, True North now bases its Motion for a Mandatory Restraining Order on claims which Plaintiff has had no opportunity to address in briefing.

2. “Courts should generally allow the nonmoving party to respond to material—whether evidence or argument—that the movant raises for the first time in a reply.” *Clancy v. Miller*, 837 F. App’x 630, 634 (10th Cir. 2020); *see also Green v. New Mexico*, 420 F.3d 1189, 1196 (10th Cir. 2005). Courts do not consider issues raised for the first time in a reply brief because it robs the opposing party “of the opportunity to demonstrate that the record does not support [a] factual assertion and to present an analysis of the pertinent legal precedent that may compel a contrary result.” *Stump v. Gates*, 211 F.3d 527, 533 (10th Cir. 2000) (internal citation omitted).

3. Because True North now bases its Motion for a Mandatory Restraining Order on different counterclaims than those that had been filed when Plaintiff filed his Opposition, Plaintiff respectfully requests that the Court grant leave to file a concise surreply brief up to ten pages — just as Defendants were permitted (Dkt. No. 43). This will allow the issues to be fully and fairly briefed for the Court’s consideration.

4. Due to the upcoming holiday, Plaintiff’s counsel is presently traveling out of the country. Thus, Plaintiff respectfully requests until Monday, December 4, 2023, to file his surreply.

DATED this 20th day of November, 2023.

SNELL & WILMER L.L.P.

/s/ Paul W. Shakespear

Paul W. Shakespear

Cameron Cutler

Natalie Beal

K&L GATES LLP

Abram I. Moore

Christian A. Zazzali

Attorneys for Plaintiff Eric Schiermeyer